

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

JANUARY
~~OCTOBER~~ TERM, 1904. 1905

No. 1480

No. 2, SPECIAL CALENDAR.

PHILO J. LOCKWOOD, PLAINTIFF IN ERROR,

vs.

THE DISTRICT OF COLUMBIA.

IN ERROR TO THE POLICE COURT OF THE DISTRICT OF COLUMBIA.

INDEX.

	Original.	Print.
Caption.....	<i>a</i>	1
Information	1	1
Motion to quash.....	2	2
Bill of exceptions.....	3	2
Testimony of R. O. Melton.....	3	3
Philo J. Lockwood.....	4	3
Copy of docket entries ..	7	4
Clerk's certificate.....	8	5
Writ of error.....	9	5

In the Court of Appeals of the District of Columbia.

PHILO J. LOCKWOOD, Plaintiff in Error, }
 vs. } No. 1480.
 THE DISTRICT OF COLUMBIA. }

a In the Police Court of the District of Columbia, September
Term, 1904.

DISTRICT OF COLUMBIA } No. 259,585. Information for Unlicensed
vs. }
PHILO J. LOCKWOOD. } Claim Agent.

Be it remembered, that in the police court of the District of Columbia, at the city of Washington, in the said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above entitled cause, to wit:

1 (Information.)

In the Police Court of the District of Columbia, September Term,
A. D. 1904.

THE DISTRICT OF COLUMBIA, ss :

James L. Pugh, Jr., assistant corporation counsel, who, for the said District of Columbia, prosecutes in this behalf in his proper person, comes here into court, and causes the court to be informed and complains that Philo J. Lockwood, late of the District aforesaid, on the first day of November in the year A. D. one thousand nine hundred and three and on divers other days and times between the said first day of November and the tenth day of September, in the year one thousand nine hundred and four, in the city of Washington and in the District aforesaid, did engage in the business of a claim agent without first having obtained a license so to do, and paying the license tax therefor, before engaging in said business. Contrary to and in violation of an act of Congress approved July 1, 1902, and constituting a law of the District of Columbia.

JAMES L. PUGH, JR.,
Assistant Corporation Counsel.

Personally appeared R. O. Melton this 10th day of September, A. D. 1904, and made oath before me that the facts set forth in the foregoing information are true.

[Seal Police Court of District of Columbia.]

[SEAL.]

W. H. RUFF,
*Deputy Clerk of the Police Court of the
District of Columbia.*

(Motion to Quash Information.)

In the Police Court of the District of Columbia.

DISTRICT OF COLUMBIA	}	No. 259,585.
<i>vs.</i>		
PHILO J. LOCKWOOD, Defendant.		

Now comes defendant and moves the court to quash the information filed in the above entitled cause on the following grounds:

1. That said information does not state an offense punishable under the laws in force in this jurisdiction.

2. That the act of Congress which attempts to define the offense alleged in said information is vague, uncertain and therefore null and void.

LAMBERT & BAKER,
Att'ys for Defendant.

In the Police Court of the District of Columbia.

DISTRICT OF COLUMBIA	}	No. 259,585.
<i>vs.</i>		
PHILO J. LOCKWOOD.		

Be it remembered at the trial of this cause, which came on for hearing on the 17th day of September, 1904, before the presiding justice, the defendant moved to quash the information filed on the grounds set out in said motion to quash, which said grounds are as follows:

1. That said information charged no offense under any law in force in the District of Columbia.

2. That said information purported to be filed under the act of Congress approved July 1st, 1902, alleging a violation of paragraph 46, section 7, in that the defendant was carrying on the business of a claim agent without a license, and that said act of Congress was uncertain, vague and on that account, null and void.

But the court overruled said motion to quash, to which ruling of the court counsel for the defendant duly excepted and said excep-

tion was duly noted by the court on its minutes, and proper notice thereof given on the part of the defendant of an intention to apply to the Court of Appeals for a writ of error: and thereupon, the defendant pleaded, "Not guilty," and the District, in order to maintain the issues on its part joined, produced as a witness one R. O. MELTON, who testified that he knew Mr. Lockwood, and that he has engaged in the prosecution of pension claims, and had been so engaged for a number of years down to the present time, and that he has no license; that he has an office and employs four or five clerks; and thereupon counsel for the defendant stated that he would admit that Mr. Lockwood was a pension attorney, and the District rested.

Thereupon, PHILO J. LOCKWOOD was produced on his own behalf, and testified as follows:

By Mr. BAKER:

Q. Mr. Lockwood, what is your occupation? A. I am an attorney at law.

Q. To what branch of the law do you devote your practice? A. Largely pension law.

Q. Do you represent anybody in claims before the several departments, other than pension cases? A. Pensions and pensions only is my motto, and has been my business.

Q. Are you the agent of anybody? A. I am the agent of no one on the face of the earth that I know of except Mr. Stanley in the sale of automobiles.

Q. I will ask you who pays you your fees? A. The Government; the Commissioner of Pensions.

Q. Have you authority to sign anyone's name, any pensioner's name or anything of that kind? A. No, sir. I act merely as his counsellor.

Q. Authority to write affidavits for him? A. No, sir. The Commissioner sits down on a fellow if he does that kind of business. If I was to write an affidavit for you and send it to you and you subscribed to it and filed it in the Pension Office, I would hear from it.

Mr. PUGH:

Q. Suppose he can't write? A. A. Affiant must have somebody in his presence and under his direction write it for him.

Q. You prosecute claims for bounty, don't you? A. No, sir.

Q. That is in connection with the pension business? A. No, it isn't in connection with my pension business.

Q. You prosecute claims for back pay and things of that kind? A. No, sir, straight pension claims, that is all.

The COURT:

Q. The Government pays your fees? A. Yes, sir.

Q. And takes it out of the amount that you receive? A. Yes, sir.

Q. So that it comes out of the pension? A. Yes, sir.

Q. That is only to secure the safety of you getting your fee? A. Yes.

Q. And it regulates the charge? A. Yes. I am admitted to practice in the Pension Office and before the Secretary of Interior as an attorney.

Thereupon the defendant rested and the case being closed, defendant moved the court to instruct itself as matter of law that the defendant was not guilty on the evidence produced, on the
6 ground that the testimony fails to show that he comes within the act, and that he was not a claim agent; but the court overruled said motion and stated that he should hold as matter of law, that a pension attorney is a claim agent; to which ruling of the court counsel for the defendant excepted, which said exception was duly noted at the time the same was taken, and notice thereof given of an intention to apply to the Court of Appeals for a writ of error; all of which said exceptions are signed this 19th day of September, A. D. 1904, *nunc pro tunc*.

LEWIS I. O'NEAL,
Acting Judge Police Court.

[Endorsed:] No. 259,585. District of Columbia vs. Philo J. Lockwood. Bill of exceptions. Copy. Filed Sept. 26, 1904.

(Copy of Docket Entries.)

In the Police Court of the District of Columbia, September Term,
A. D. 1904.

DISTRICT OF COLUMBIA	}	No. 259,585. Information for Unlicensed Claim Agent.
vs.		
PHILO J. LOCKWOOD.		

Sept. 17, 1904.—Motion to quash information filed. Motion to quash argued and overruled.

Defendant arraigned; Plea: Not guilty. Judgment: Guilty. Sentence: To pay a fine of ten dollars, and, in default, to be committed to the workhouse for the term of thirty days.

Exceptions taken to the rulings of the court on matters of law and notice given by defendant in open court at the time of the several rulings of his intention to apply to a justice of the Court of Appeals of the District of Columbia for a writ of error.

Recognizance in the sum of one hundred dollars entered into on writ of error to the Court of Appeals of the District of Columbia upon the condition that in the event of the denial of the application for a writ of error, the defendant will, within five days next after the expiration of ten days, appear in the police court and abide by and

perform its judgment, and that in the event of the granting of such writ of error, the defendant will appear in the Court of Appeals of the District of Columbia and abide by and perform its judgment in the premises.

CARL J. LOCKWOOD, *Surety*.

September 19, 1904.—Bill of exceptions filed, settled and signed.

September 22, 1904.—Writ of error received from the Court of Appeals of the District of Columbia.

8 In the Police Court of the District of Columbia.

UNITED STATES OF AMERICA, }
District of Columbia, } ss :

I, Joseph Y. Potts, clerk of the police court of the District of Columbia, do hereby certify that the foregoing pages, numbered from 1 to 7 inclusive, *to be* true copies of originals in cause No. 259,585 wherein The District of Columbia is plaintiff and Philo J. Lockwood defendant, as the same remain upon the files and records of said court.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, — the city of Washington, in said District, this 6th day October, A. D. 1904.

[Seal Police Court of District of Columbia.]

JOSEPH Y. POTTS,
Clerk Police Court, Dist. of Columbia.

9 UNITED STATES OF AMERICA, ss :

The President of the United States to the Honorable Lewis I. O'Neal, acting judge of the police court of the District of Columbia, Greeting :

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said police court, before you, between The District of Columbia, plaintiff, and Philo J. Lockwood, defendant, a manifest error hath happened, to the great damage of the said defendant, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Court of Appeals of the District of Columbia, together with this writ, so that you have the same in the said Court of Appeals, at Washington, within 15 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Court of Appeals may cause

further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Richard H. Alvey, Chief Justice of the said Court of Appeals, the 22d day of September, in the year of our Lord one thousand nine hundred and four.

[Seal Court of Appeals, District of Columbia.]

HENRY W. HODGES,
Clerk of the Court of Appeals of the District of Columbia.

Allowed by

R. H. ALVEY,
*Chief Justice of the Court of Appeals of
the District of Columbia.*

Endorsed on cover: District of Columbia police court. No. 1480. Philo J. Lockwood, plaintiff in error, vs. The District of Columbia. Court of Appeals, District of Columbia. Filed Oct. 6, 1904. Henry W. Hodges, clerk.

No. 1480.

SPECIAL No. 19.

LO J. LOCKWOOD, PLAINT

VS.

THE DISTRICT OF COL

F FOR THE DISTRICT C

Court of Appeals, District of Columbia.

OCTOBER TERM, 1904.

No. 1480.

SPECIAL No. 19.

PHILO J. LOCKWOOD, PLAINTIFF IN ERROR,

vs.

THE DISTRICT OF COLUMBIA.

BRIEF FOR THE DISTRICT OF COLUMBIA.

STATEMENT OF THE CASE.

The plaintiff in error was tried and convicted in the police court upon an information charging him engaging in the business of a claim agent without having obtained a license to do so and without paying the tax therefor.

A motion was made on his behalf to quash the information because—

1. It did not state a punishable offense.

2. That the act of Congress attempting to define the offense alleged is vague, uncertain, and therefore null and void.

At the trial of the case it was testified on the part of the District that the plaintiff in error is a claim agent, engaged in the prosecution of pension claims, and had been so engaged for a number of years; that he has no license; that he has an office, and employs four or five clerks. Counsel for the plaintiff in error admits that he is a pension attorney.

On his own behalf the plaintiff in error testified that he is an attorney-at-law and devotes his attention largely to pension law; that he does not prosecute claims before any other branch of the Government; that he is not the agent of any one and his fees are paid by the Government out of the pensions allowed; has not authority to write affidavits for claimants; was admitted to practice in the Pension Office and before the Secretary of the Interior as an attorney.

ARGUMENT.

The act under which a license is required is paragraph 46, section 7, July 1, 1902 (the personal tax law):

"An annual license tax is hereby imposed upon the following classes of business, trades and professions, namely: Boarding houses (public), one dollar per room; claim agents, twenty-five dollars;" * * *

The plaintiff in error contends that he is not a claim agent, but an attorney engaged in practice before the Bureau of Pensions, and therefore not liable to the tax.

An attorney is not admitted to practice before the Interior Department by reason of being such. The regulations provide :

"1. Under the authority conferred on the Secretary of the Interior by the fifth section of the act of July 4, 1884, it is hereby prescribed that an attorney-at-law who desires to represent claimants before the Department or one of its bureaus shall file a certificate of the clerk of the United States, State, or territorial court, duly authenticated under the seal of the court, that he is an attorney in good standing.

"2. Any person (not an attorney-at-law) who desires to appear as agent for claimants before the Department or one of its bureaus must file a certificate from a judge of a United States, State, or territorial court, duly authenticated under the seal of the court, that such person is of good moral character and in good repute, possessed of the necessary qualifications to enable him to render claimants valuable service, and otherwise competent to advise and assist them in the presentation of their claims.

"3. The Secretary may demand additional proof of qualifications, and reserves the right to decline to recognize any attorney, agent, other person applying to represent claimants under this rule.

"4. The oath of allegiance required by section 3478 of the United States Revised Statutes must also be filed."

There are eleven of these regulations, the others providing for disbarment, etc.

The court is asked to take judicial notice of these regulations.

Caha vs. U. S., 152 U. S., 211.

Knight vs. U. S. Land Ass'n, 142 U. S., 161.

What is a claim agent?

A claim agent is popularly supposed to be a person who is engaged in the prosecution of claims against the Government. That the popular understanding is correct is amply borne out by reference to the statutes dealing with this class of practioners.

R. S., section 4711. "* * * and no claim agent or other person shall be entitled to receive any compensation for services in making application for arrears of pension."

"Agent" is the word usually employed in the statutes to designate the attorney for the claimant to a pension :

See Revised Statutes, sections 4768, 4769, 4785, 4786, 5485.

A brief reference to the opinions of the Attorneys General will show that those officers had a similar idea of the meaning of the term :

"Under this general act * * * every claim against the Government may be prosecuted * * * by an attorney or claim agent; and any one who pays the license tax and takes the oath may act as such claim agent except only officers of the Government. * * * I find also that by a joint resolution passed on July 20, 1866, in relation to bounties and pensions to colored soldiers the intervention of claim agents is recognized." * * *

12 Opinions Att. Gen., 66.

See also 13 Opinions Att. Gen., 152.

The Secretary of the Interior is authorized to disbar for misconduct attorneys practicing before his Department:

“Whether the facts are such as to bring a case within the legal principle thus announced must be decided by the head of the Department in which the claim agent practices.”

16 Opin. Atty. Gen., 488.

The legislature has defined the term for itself:

“Claim agents for procuring patents shall pay ten dollars for each license. Every person whose business it is to prosecute claims in any of the executive departments of the Federal Government, or procure patents, shall be deemed a claim or patent agent, as the case may be.”

12 Statutes at Large, 469.

13 Statutes at Large, 254.

“Claim agents shall pay fifteen dollars annually. Every person whose business it is to prosecute claims before the executive departments of the General Government or the District of Columbia shall be regarded as a claim agent.”

Act Legislative Assembly, Aug. 23, 1871, sec. 22, par. 46.

The three acts above referred to were acts *in pari materia* with the act under discussion—*i. e.*, they were acts passed for raising revenue. In the two first cited, attorneys also were required to pay a license, and the legislature defined what constituted an attorney.

See paragraph 31 of the act of 1862, and paragraph 43 of the act of 1864.

INTERPRETATION OF THE LAW.

"The courts approach the interpretation of a statute with the presumption that words and phrases therein are used in their familiar and popular sense, and without any forced, subtle, or technical construction to limit or extend their meaning."

26 Eng. & Am. Ency., 605.

"Words in a subsequent act are to be given the recognized meaning they had in a former act *in pari materia* in the absence of anything to show a contrary intent."

26 Eng. & Am. Ency., 611.

"It is fair to presume, in case a special meaning was attached to certain words in a prior tariff act, that Congress intended they should have the same signification when used in a subsequent act in relation to the same subject-matter."

Reiche vs. Smythe, 13 Wall., 162.

"And it may be admitted that when, in a later act, Congress uses expressions that had a recognized meaning in a former act relating to the same subject, they intended to use them in the same sense in which they were first used; that is, with their recognized meaning."

Greenleaf vs. Goodrich, 101 U. S., 278.

It is sufficient to say, in conclusion, that we have here the popular understanding of the term "claim agent," opinions of various Attorneys General showing their use of it and the definition made by the legislature on three different occasions, and all the different uses employed converging to the same intent. It is contended, therefore, that there can be no

substantial reason for urging that the use of the term in the
t under discussion can be different from that so long and
so widely employed and understood.

The judgment of the court below was correct and should
be affirmed.

Respectfully submitted.

A. B. DUVALL,

F. H. STEPHENS,

Attorneys for the Appellee.